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DEC 7 1982
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No. 82-563

IN THE

Supreme Court of the United States

October Term, 1981

GRANT-OLIVER CORPORATION,
TRANS WORLD AIRLINES, INC., USAIR, INC., et al.,
Appellants

v.

MOON AREA SCHOOL DISTRICT,
Appellee

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

MEMORANDUM IN OPPOSITION TO MOTION TO AFFIRM

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December 6, 1982

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MEMORANDUM IN OPPOSITION TO MOTION TO AFFIRM

The Appellee School District argues that its patron parking tax does not discriminate against interstate travel and does not impose a constitutionally impermissible burden on the right to travel because: (1) it "applies to all non-residential parking spaces in the [school] district"; (2) it "is borne according to the extent of the use of the parking facilities"; and (3) it does not distinguish between patrons using interstate air commerce and patrons engaged in interstate or local commerce. (Mot. p. 7.)*

In fact, however, the tax is aimed at and falls almost exclusively on non-residents of the School District who are traveling in interstate commerce and impermissibly discriminates against those engaging in interstate commerce.

The tax is imposed on patrons of commercial parking lots located in the School District. As the Pennsylvania Supreme Court stated, "The record here indicates that the vast majority of patrons of the parking lots are traveling in air commerce. . . . The conclusion that the parking activity is a part of the flow of or connected with interstate commerce is inescapable." (App. 15a.)

The trial court found that "the patrons subject to the tax are overwhelmingly engaged in interstate commerce and are non-residents of the District. The District provides *no services or facilities* for the non-resident interstate travelers because there are none available." (Emphasis added) (App. 43a.) Thus, the Appellee's tax is

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*"Mot." references are to the Motion to Affirm. "App." references are to the Appendix to the Jurisdictional Statement.

unlike the tax sustained in the case principally relied on by the School District, *Budget-Rent-A-Car of Wash. v. Multnomah Cty.*, 287 Or. 93, 597 P. 2d 1232 (1979). In *Budget*, the tax was imposed by a governmental entity, a county, which provided benefits and protection to those who were subject to the tax—here the School District provides none. Further, the court in *Budget* stated that it would not have sustained the tax if, as here, "the actual incidence of the tax on local users were only episodic and trivial."

The Appellee's tax falls almost exclusively on persons traveling in interstate commerce. It is not imposed for the purpose of making those travelers bear a fair share of the cost of providing public facilities that further such travel. It impermissibly discriminates against those traveling in interstate commerce and is therefore unconstitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing Memorandum has been made on this ____ day of December, 1982 by delivering three copies thereof to the offices of the following attorneys, who are counsel for all parties required to be served:

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